

SENATE BILL REPORT

SHB 1778

As Reported by Senate Committee On:
Natural Resources, Ocean & Recreation, March 30, 2009
Ways & Means, April 6, 2009

Title: An act relating to modernizing certain provisions in Title 77 RCW regarding fish and wildlife.

Brief Description: Modifying various provisions of Title 77 RCW.

Sponsors: House Committee on Agriculture & Natural Resources (originally sponsored by Representative Blake; by request of Department of Fish and Wildlife).

Brief History: Passed House: 3/11/09, 96-1.

Committee Activity: Natural Resources, Ocean & Recreation: 3/23/09, 3/30/09 [DPA-WM, DNP].

Ways & Means: 4/03/09, 4/06/09 [DPA, DNP, w/oRec].

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Jacobsen, Chair; Ranker, Vice Chair; Fraser, Hargrove, Hatfield and Swecker.

Minority Report: Do not pass.

Signed by Senator Morton, Ranking Minority Member.

Staff: Karen Epps (786-7424)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Fairley, Kline, Kohl-Welles, McDermott, Murray, Oemig, Pridemore, Regala and Rockefeller.

Minority Report: Do not pass.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Honeyford and Parlette.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: That it be referred without recommendation.

Signed by Senators Pflug and Schoesler.

Staff: Maria Hovde (786-7710)

Background: Fish and Wildlife Enforcement. The Fish and Wildlife enforcement statutes contain a number of unlawful acts that relate to hunting, fishing, and other wildlife-related activities. The penalties for violating these regulations range from civil natural resources infractions to misdemeanors and felonies.

In addition to the violations outlined in the statute, the Fish and Wildlife Commission (Commission) has the authority to adopt rules that regulate the harvest of wildlife and fish. Rules adopted by the Commission can be enforced with criminal sanctions, and serve as a basis for some of the crimes expressly outlined in the statute. If a rule is not an element of a statutory crime, the Commission has the authority to provide for civil enforcement of the rule.

DFW may suspend a person's privilege to fish commercially if the person is convicted two or more times within three years of a commercial fishing violation. The suspension of privileges only applies to the fishery within which the violation occurred.

Commercial and Recreational Licenses. The Department of Fish and Wildlife (DFW) offers a taxidermy license and a fur buyer's license to individuals interested in pursuing the commercial aspects of these industries. License holders must abide by any rule of the Commission relating to the use, possession, display, or presentation of the license. Failure to do so may result in a criminal prosecution of the unlawful use of a commercial wildlife license.

DFW offers a number of short-term fishing licenses. These licenses allow for fishing between one and five days. However, only active duty military personnel may fish during the first eight days of the lowland lake fishing season with a short-term license.

Individuals must obtain a salmon guide license from DFW before they are allowed to operate a guide service in freshwater rivers and streams for anglers catching salmon for personal use. The salmon guide license is not necessary if the guide services take place between the mouth of the Columbia River and the Lewis and Clark Bridge in Longview. A charter license is needed to act as a guide in the river below the bridge.

DFW conducts raffles as a way to grant permission to hunt big game and turkeys during certain limited seasons. Licensed hunters may purchase a raffle ticket, but only raffle winners are permitted to participate in the limited season. Raffle tickets may not exceed \$25. The Commission is allowed to offer hunting opportunities to up to 15 turkey or big game hunters each year through the raffle system.

Money from the Eastern Washington Pheasant Enhancement Account may be used to improve pheasant habitat or to purchase or produce pheasants, with no less than 80 percent of monies from the account used to purchase or produce pheasants.

Aquatic Invasive Species. Signs warning vessels of the threat of aquatic invasive species, the penalties associated with introduction of an invasive species, and proper contact information for obtaining a free vessel inspection must be posted at all ports of entry and at all boat launches owned or leased by DFW. DFW is authorized to establish random check stations and require persons transporting recreational and commercial watercraft to stop at the check stations.

Wildlife Interactions Compensation. Currently, the DFW may compensate persons for horticultural or agricultural crop damage caused by wild deer or elk. Damages are limited to the value of the crops and are only paid to the owner.

Fish and Wildlife Governance. The Commission consists of nine members who serve six-year terms. Members are appointed by the Governor with the advice and consent of the Senate. Three commissioners must reside east of the summit of the Cascade mountains, three must reside west of the summit, and three are appointed at-large. The Commission must hold at least one regular meeting in each calendar quarter. The Commission has the authority to appoint the Director of Fish and Wildlife. The Legislature has authorized the Commission to establish policies and rules regarding fish and wildlife species and to monitor the DFW's implementation of those policies.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Amendments): Fish and Wildlife Enforcement. Failure to pay a fine or appear at a hearing to contest an infraction or criminal citation is considered a conviction for purposes of the Fish and Wildlife enforcement statutes. Additionally, forfeiture of bail is also considered a conviction for the purposes of the Fish and Wildlife enforcement statutes. If a person is convicted of violating recreation hunting or fishing laws or rules, including a fish and wildlife infraction, three times or more in a ten-year period, revocation and suspension of all recreational hunting and fishing privileges must be ordered for two years.

A person's Master Hunter Permit may be suspended or revoked for certain reasons for specific periods of time. A person who holds a fur buyer's license or a taxidermy license is guilty of unlawful use of a commercial wildlife license for violating any rule of DFW regarding reporting requirements.

The DFW may dispose of unclaimed property in the same manner as is currently done by the State Patrol.

The DFW may use monies in the Fish and Wildlife Enforcement Reward Account to offset department-approved costs incurred to administer the Hunter Education Deferral Program and the Master Hunter Program.

Commercial and Recreational Licenses. The Commission is given the authority to allow anglers to purchase a stamp allowing them to use two fishing poles at one time. The cost of this addition to a fishing license is \$20 for most anglers, and \$5 for state residents over the age of 69. Additionally, the Commission must define the opening day of lowland lake fishing season by rule.

A person must have a license or permit in order to act as a food fish guide, except that a charter boat license is required to operate a vessel from which a person may for a fee fish for food fish in certain state waters. A person is guilty of acting unlawfully as a game fish guide or food fish guide if the person acts as a game fish guide or food fish guide and does not hold the proper license. Violation of this provision is a gross misdemeanor.

Retail sellers, such as grocery stores, are exempt from needing an anadromous game fish buyer's license if they purchased their steelhead trout or other anadromous game fish from a licensed wholesale fish dealer.

For the 2009-2011 biennium, DFW may charge an additional transaction fee of no greater than 10 percent for licenses, permits, tags, stamps, or raffles.

The Commission is given the authority to increase from 15 to 30 the number of big game and turkey raffles DFW may offer each year. The revenue from the raffles may be used for the management of all game species, and not just for the improvement of the habitat, health, and welfare of the species subject to the raffle.

Money from the Eastern Washington Pheasant Enhancement Account may be used to improve pheasant habitat or to purchase or produce pheasants. The DFW must submit an annual report on the Eastern Washington pheasant activities to the appropriate committees of the Legislature.

Aquatic Invasive Species. The DFW enforcement division may provide aquatic invasive species instruction training to other local law enforcement. A person entering Washington while transporting watercraft must have in their possession documentation that the watercraft has been inspected and found free of aquatic invasive species. The cost of impounding, transporting, cleaning, and decontaminating watercraft that is contaminated with aquatic invasive species will be paid by the person in possession of the watercraft when it is inspected.

Wildlife Interactions Compensation. The DFW may distribute money to reimburse the owner of commercial crops damaged by wild deer or elk or the owner of commercial livestock for livestock killed or injured by predatory wildlife, including bears, wolves, and cougars, if the owners meet certain criteria. Additionally, DFW may provide materials, services, or noncash compensation to be used to offset wildlife damage to property other than commercial crops or commercial livestock.

Fish and Wildlife Governance. Changes are made to the structure of the Commission, including reducing the number of commissioners from nine to seven and reducing terms of commissioners from six to four years. Six of the Commissioners must come from each DFW region and one must be at-large. The authority to appoint the Director is transferred from the Commission to the Governor, and the Commission may advise the Governor on this appointment. Director appointments must be made with the consent of the Senate. A process is created to facilitate the transfer from the current to the new Commission structure. Commission appointments must be made with the advice and consent of the Senate.

Other Changes. A number of references to other statutes throughout Title 77 are removed or corrected to reflect current codifications. Examples of these corrected antiquated references are located in sections of the code that deal with criminal convictions and fish passage requirements. In addition, a redundant section of the code relating to wildlife viewing is repealed.

The use of the term "State Wildlife Fund" is updated to "State Wildlife Account" to reflect the correct name of the account as it is used in Title 77. References to work groups that no longer exist are removed from Title 77, such as the Ballast Water Work Group. Also removed are references to studies, reports, and other one-time work products that have been completed by DFW.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Amendments): Removes the requirement that members of the Commission must have served on the Commission for two years or more in order to serve as chair. Requires the Governor, on or before December 31, 2009, to appoint from the existing Commissioners seven individuals to continue to serve on the Commission. Allows the Commission to advise the Governor on the appointment of the Director of the DFW.

EFFECT OF CHANGES MADE BY NATURAL RESOURCES, OCEAN & RECREATION COMMITTEE (Recommended Amendments as Passed Committee): Removes the requirement that a person's commercial fishing license privileges may be suspended by DFW for up to one year and the commercial fishing license may not be transferred after a notice of suspension is issued if a person is convicted of two or more specific commercial fishing violations within a three-year period.

Establishes that DFW may distribute money to reimburse the owner of commercial crops damaged by wild deer or elk or the owner of commercial livestock for livestock killed or injured by predatory wildlife, including bears, wolves, and cougars, if the owners meet certain criteria. Allows DFW to provide materials, services, or noncash compensation to be used to offset wildlife damage to property other than commercial crops or commercial livestock.

Removes the requirement that 80 percent of the money from the Eastern Washington Pheasant Enhancement Account be used to purchase or produce pheasants. Requires DFW to submit an annual report on the Eastern Washington pheasant activities.

Establishes that the Commission be comprised of seven members, each with four-year terms. Establishes that six commissioners come from each DFW region and one be at-large. Provides that the Commission select the chair and vice-chair for two-year terms, but beginning in 2014, the chair must have two years of experience. Vacates current Commission positions August 1, 2009, and requires the Governor to appoint seven commissioners by August 1, 2009, with the initial terms staggered. Requires the Governor to appoint the Director from among three candidates recommended by the Commission. Requires that Commission appointments be made with the advice and consent of the Senate. Requires that Director appointments be made with the consent of the Senate. Requires the Commission hold four regular meetings annually and special meetings when called, with a quorum being four members.

Raises the cost of a two-pole fishing stamp to \$20 and requires that the money be used to operate and maintain state-owned fish hatcheries. For the 2009-2011 biennium, allows DFW to charge a transaction fee of no greater than 10 percent for licenses, permits, tags, stamps, or raffles.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony as Heard in Committee (Natural Resources, Ocean & Recreation): PRO: This amendment is a merger of the two bills, HB 1778 and SB 5404, both of which deal with DFW enforcement statutes. There has been discussion about removing one section of the bill, section 12, and working on that issue over the interim. There is interest in including language regarding wildlife interactions in this bill.

Persons Testifying (Natural Resources, Ocean & Recreation): PRO: Bruce Bjork, Mike Cenci, DFW; Jack Field, Washington Cattlemen's Association.

Staff Summary of Public Testimony on NROR Recommended Amended Bill (Ways & Means): PRO: The provisions in the bill relating to enforcement and wildlife interactions have been developed with stakeholder input. The regulated communities are very serious about resolving the fiscal issues of DFW. As a result, they have brought forward the additional raffles and the 10 percent surcharge on licenses in response to these concerns. However, they would like to see a portion of this revenue utilized specifically for enforcement and biologists. The hatcheries and fisheries they support are critical to the economy and the culture of the state, providing more than \$4 billion of economic benefit through commercial and sport fishing industries. In addition, the hatcheries hold the genetic stocks of many fish, which would be lost if they were to close. This bill brings solutions to the table for these cuts. Reorganizing the Commission will avoid the ongoing waste of fiscal resources.

CON: The sections pertaining to the governance of the Fish and Wildlife Commission run counter to the public's will and the fiscal ramifications are truly de minimus. The people created the Game Commission in 1932 and did so again by referendum in 1995 after the merger. If you believe that this restructuring has merit, it should be referred to the people for their vote

OTHER: DFW does not have a position on the governance of the Commission but is hopeful this bill will pass because this bill provides a very large revenue enhancement to the Wildlife Account, more than \$8 million. The 10 percent surcharge is temporary but gives DFW the opportunity to work the stakeholders to develop a long-term fix. In addition, the bill directs that all the current Commissioners be replaced August 1 of this year, which is at the time when the Commission is starting to establish fall hunting seasons and to set agreements with

Oregon on the Columbia River fisheries. This has a tremendous opportunity for fiscal impacts. These sections of the bill may also have scope and object issues, which could adversely impact the rest of the proposed legislation.

Persons Testifying (Ways & Means): PRO: Ed Owens, Coalition of Coastal Fisherman; Steve Robinson, Northwest Indian Fisheries Commission; Ezra Eickmeyer, Fish Pac; Shelby Shrauner, Eickmeyer and Associates.

CON: Steve Fransen, Washington Steelhead Fly Fishers.

OTHER: Bruce Bjork, Tom Davis, DFW; Mike Ryherd, Robert Holmes, Coastal Conservation Association.